

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHAUNCEY GIRARD,

Plaintiff,

ANSWER

-against-

Jury Trial Demanded

ST. LOUIS, *et al.*,

9:22-CV-0339
(DNH/TWD)

Defendants.

Defendants ST. LOUIS, C.O. HOIT, SGT. GONYEA, SGT. DOWD, C.O. CASTAGNIER, SGT. MORRILL, and SGT. HANNA (“Defendants”), by their attorney, Letitia James, Attorney General of the State of New York, Olivia R. Cox, Assistant Attorney General, of counsel, answer the Amended Complaint by plaintiff Chauncey Girard (“Plaintiff”), and state as follows:

1. Deny each and every allegation in the Amended Complaint that alleges or tends to allege that Defendants acted in any way contrary to constitutional, statutory, regulatory, or common law.

2. Pages 1-3¹ of the Amended Complaint generally identify the plaintiff and named defendants in this action and no response is required. To the extent a response is required, Defendants admit that they are or were employed by the New York State Department of Corrections and Community Supervision as correction officers, and deny the remaining allegations set forth in Section “II” of the Amended Complaint.

¹ All references to specific page numbers are to those numbers assigned by the Court’s Electronic Filing System.

3. Deny the allegations set forth in paragraph 1 of the section titled “Statement of Facts.”

4. Deny the allegations set forth in paragraph 2 of the section titled “Statement of Facts.”

5. Deny the allegations set forth in paragraph 3 of the section titled “Statement of Facts.”

6. Deny the allegations set forth in paragraph 4 of the section titled “Statement of Facts.”

7. Object to the written narrative on pages 7-8 of the Amended Complaint titled “Supplemented addition of persons Due to ongoing acts,” as the allegations are not separated by any numbering system or other means to provide the answering Defendants with an ability to respond to Plaintiff’s allegations. Defendants object that the pleading is not in compliance with the Federal Rules of Civil Procedure or the Court’s Local Rules. Without waiving any objection, Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in this section in its entirety.

8. Deny the allegations set forth on page 8 of the Amended Complaint titled “8th Amendment and Deliberate Indifferent [sic.] Claims.”

9. Deny the allegations set forth on page 9 of the Amended Complaint titled “8th Amendment and Deliberate Indifferent [sic.] Claims Failure to Protect.”

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth on page 9 of the Amended Complaint titled “1st Amendment 14th Amendment 5th Amendment with addition of parties.”

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth on page 9 of the Amended Complaint titled “Failure to Protect putting in Harms way.”

12. Page 10 of the Amended Complaint titled “Injury and Rquest [sic.] for releif [sic.],” generally states a demand for judgment and relief, and, as such, no response is required. To the extent a response is required, Defendants deny Plaintiff is entitled to any relief requested, and deny that they caused Plaintiff any injury or harm.

13. Deny any allegation in the Amended Complaint not specifically responded to above.

AFFIRMATIVE DEFENSES

14. The Amended Complaint fails to state a claim upon which relief can be granted.

15. At all relevant times Defendants acted under the reasonable belief that their conduct was in accordance with clearly established law. They are, therefore, protected under the doctrine of qualified immunity.

16. The Amended Complaint is barred, to the extent applicable, under principles of *res judicata* and collateral estoppel.

17. To the extent applicable, the Amended Complaint is barred by the applicable statute of limitations.

18. To the extent applicable, the Amended Complaint is barred, in whole or in part, under the Eleventh Amendment.

19. To the extent applicable, Defendants were not personally involved in the alleged constitutional or statutory violations, and they are therefore not liable under 42 U.S.C. § 1983. The

doctrine of *respondeat superior* does not apply in civil rights cases, and the Amended Complaint should therefore be dismissed.

20. To the extent applicable, Plaintiff has failed to exhaust administrative remedies.

21. To the extent Plaintiff has, on three or more occasions, brought an action or appeal that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, he is barred from proceeding under section 1915.

22. To the extent this action is brought for mental or emotional injury, plaintiff is barred from proceeding without a prior showing of physical injury.

23. Upon information and belief, Plaintiff has been convicted of one or more felonies or other crimes for which there are or may be restitution orders pending. Pursuant to section 807 of the Prison Litigation Reform Act of 1995, any compensatory damages to be awarded Plaintiff herein shall be paid directly to satisfy any such outstanding orders until paid in full. Therefore, Plaintiff is or may not be entitled to any payment herein.

24. Upon information and belief, Plaintiff has been convicted of one or more felonies or other crimes. Pursuant to section 808 of the Prison Reform Act of 1995, prior to payment of any compensatory damages to Plaintiff, reasonable efforts shall be made to notify the victims of the crime for which Plaintiff was convicted and incarcerated. Upon information and belief, Plaintiff must be compelled to cooperate in the notification of his victims prior to payment of any judgment herein, or he should be barred from recovery.

25. Defendants hereby demand a trial by jury.

WHEREFORE, Defendants respectfully request this Honorable Court deny the relief requested, dismiss the Complaint with prejudice, and grant such other relief as the Court deems just, proper, and equitable.

Dated: Albany, New York
December 20, 2022

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
The Capitol
Albany, New York 12224-0341

By: s/ *Olivia R. Cox*
Olivia R. Cox
Assistant Attorney General, of Counsel
Bar Roll No. 703982
Telephone: (518) 776-2607
Email: Olivia.Cox@ag.ny.gov

TO:

Robert Rickner (via CM/ECF)
Rickner PLLC
14 Wall Street, Suite 1603
New York, NY 10005

Stephanie Panousieris (via CM/ECF)
Rickner PLLC
14 Wall Street, Suite 1603
New York, NY 10005